

# HOUSE BILL 34

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(PRE-FILED)

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CF 2lr0361

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By: **Delegate Smigiel**

Requested: July 13, 2011

Introduced and read first time: January 11, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Discharge from Commitment of Person Previously**  
3 **Found Not Criminally Responsible – Judicial Hearing**

4 FOR the purpose of authorizing a court on its own initiative or on motion of a party to  
5 hold a certain de novo hearing after receiving a report of recommendations from  
6 the Office of Administrative Hearings regarding discharge from commitment of  
7 a person previously found not criminally responsible; providing that a certain  
8 committed person is entitled to be present and represented at a certain hearing;  
9 authorizing a court to continue a certain hearing for the purpose of taking  
10 additional evidence; providing that a determination made by a court on whether  
11 evidence taken by the Office indicates that a certain committed person proved  
12 eligibility for release be made as a matter of law; providing that a determination  
13 made by a court on whether evidence taken by the court itself indicates that a  
14 certain committed person proved eligibility for release be made as a matter of  
15 fact and law; and generally relating to judicial hearings regarding the release  
16 from commitment of persons found not criminally responsible.

17 BY repealing and reenacting, without amendments,  
18 Article – Criminal Procedure  
19 Section 3–114, 3–115, and 3–116  
20 Annotated Code of Maryland  
21 (2008 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article – Criminal Procedure  
24 Section 3–117 and 3–118  
25 Annotated Code of Maryland  
26 (2008 Replacement Volume and 2011 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Procedure**

4 3–114.

5 (a) A committed person may be released under the provisions of this section  
6 and §§ 3–115 through 3–122 of this title.

7 (b) A committed person is eligible for discharge from commitment only if that  
8 person would not be a danger, as a result of mental disorder or mental retardation, to  
9 self or to the person or property of others if discharged.

10 (c) A committed person is eligible for conditional release from commitment  
11 only if that person would not be a danger, as a result of mental disorder or mental  
12 retardation, to self or to the person or property of others if released from confinement  
13 with conditions imposed by the court.

14 (d) To be released, a committed person has the burden to establish by a  
15 preponderance of the evidence eligibility for discharge or eligibility for conditional  
16 release.

17 3–115.

18 (a) Within 50 days after commitment to the Health Department under  
19 § 3–112 of this title, a hearing officer of the Health Department shall hold a hearing to  
20 consider any relevant information that will enable the hearing officer to make  
21 recommendations to the court as to whether the committed person is eligible for  
22 release under § 3–114 of this title.

23 (b) (1) The release hearing may be postponed for good cause or by  
24 agreement of the committed person and the Health Department.

25 (2) The committed person may waive the release hearing.

26 (c) (1) Unless the Health Department has completed an examination and  
27 report during the 90 days preceding the release hearing, at least 7 days before the  
28 release hearing is scheduled, the Health Department shall complete an examination  
29 and evaluation of the committed person.

30 (2) Whether or not the release hearing is waived, the Health  
31 Department shall send a copy of the evaluation report:

32 (i) to the committed person;

33 (ii) to counsel for the committed person;

1 (iii) to the State's Attorney; and

2 (iv) to the Office of Administrative Hearings.

3 (d) (1) The Health Department shall send notice of the release hearing to:

4 (i) the committed person;

5 (ii) counsel for the committed person; and

6 (iii) the State's Attorney.

7 (2) The Office shall issue any appropriate subpoena for any person or  
8 evidence. The court may compel obedience to the subpoena.

9 (e) (1) Formal rules of evidence do not apply to the release hearing, and  
10 the Office may admit and consider any relevant evidence.

11 (2) The hearing shall be recorded, but the recording need not be  
12 transcribed unless requested. The requesting party shall pay the costs of the  
13 transcript and, if exceptions have been filed, provide copies to other parties and the  
14 court. If the court orders a transcript, the court shall pay the costs of the transcript.

15 (3) Any record that relates to evaluation or treatment of the  
16 committed person by this State shall be made available, on request, to the committed  
17 person or counsel for the committed person.

18 (4) The Health Department shall present the evaluation report on the  
19 committed person and any other relevant evidence.

20 (5) At the release hearing, the committed person is entitled:

21 (i) to be present, to offer evidence, and to cross-examine  
22 adverse witnesses; and

23 (ii) to be represented by counsel, including, if the committed  
24 person is indigent, the Public Defender or a designee of the Public Defender.

25 (6) At the release hearing, the State's Attorney and the Health  
26 Department are entitled to be present, to offer evidence, and to cross-examine  
27 witnesses.

28 3-116.

29 (a) Within 10 days after the hearing ends, the Office shall prepare a report of  
30 recommendations to the court that contains:

1 (1) a summary of the evidence presented at the hearing;

2 (2) recommendations of the Office as to whether the committed person  
3 proved, by a preponderance of the evidence, eligibility for conditional release or  
4 eligibility for discharge; and

5 (3) if the Office determines that the committed person proved  
6 eligibility for conditional release, the recommended conditions of the release in  
7 accordance with subsection (b) of this section.

8 (b) In recommending the conditions of a conditional release, the Office shall  
9 give consideration to any specific conditions recommended by the facility of the Health  
10 Department that has charge of the committed person, the committed person, or  
11 counsel for the committed person.

12 (c) The Office shall send copies of the report of recommendations:

13 (1) to the committed person;

14 (2) to counsel for the committed person;

15 (3) to the State's Attorney;

16 (4) to the court; and

17 (5) to the facility of the Health Department that has charge of the  
18 committed person.

19 (d) The committed person, the State's Attorney, or the Health Department  
20 may file exceptions to the report of the Office within 10 days after receiving the report.

21 3-117.

22 (a) Within 30 days after the court receives the report of recommendations  
23 from the Office:

24 (1) the court on its own initiative may hold a hearing; or

25 (2) if timely exceptions are filed, or if the court requires more  
26 information, the court shall hold a hearing unless the committed person and the  
27 State's Attorney waive the hearing.

28 (b) (1) The court shall:

29 (I) hold the hearing on the record that was made before the  
30 Office; **OR**

1                   **(II) ON ITS OWN INITIATIVE OR ON MOTION BY EITHER**  
2 **PARTY, HOLD A DE NOVO HEARING IN WHICH THE COURT MAY RECEIVE**  
3 **EVIDENCE, HEAR WITNESSES, AND ENGAGE IN ITS OWN FACT-FINDING.**

4                   (2) At [the] A judicial hearing **HELD IN ACCORDANCE WITH**  
5 **PARAGRAPH (1) OF THIS SUBSECTION**, the committed person is entitled to be  
6 present and to be represented by counsel.

7                   (3) The court may:

8                   **(I)** continue its hearing and remand for the Office to take  
9 additional evidence; **OR**

10                   **(II) CONTINUE ITS HEARING FOR THE PURPOSE OF TAKING**  
11 **ADDITIONAL EVIDENCE ITSELF.**

12 3–118.

13                   (a) Within 15 days after a judicial hearing ends or is waived, the court shall:

14                   **(1) (I)** determine whether the evidence **ON THE RECORD THAT**  
15 **WAS MADE BEFORE THE OFFICE** indicates **AS A MATTER OF LAW** that the  
16 committed person proved by a preponderance of the evidence eligibility for release,  
17 with or without conditions, in accordance with § 3–114 of this title[, and]; **OR**

18                   **(II) DETERMINE WHETHER THE EVIDENCE TAKEN BY THE**  
19 **COURT INDICATES AS A MATTER OF FACT AND LAW THAT THE COMMITTED**  
20 **PERSON PROVED BY A PREPONDERANCE OF THE EVIDENCE ELIGIBILITY FOR**  
21 **RELEASE, WITH OR WITHOUT CONDITIONS, IN ACCORDANCE WITH § 3–114 OF**  
22 **THIS TITLE; AND**

23                   **(2)** enter an appropriate order containing a concise statement of the  
24 findings of the court, the reasons for those findings, and ordering:

25                   [(1)] **(I)** continued commitment;

26                   [(2)] **(II)** conditional release; or

27                   [(3)] **(III)** discharge from commitment.

28                   (b) (1) If timely exceptions are not filed, and, on review of the report of  
29 recommendations from the Office, the court determines that the recommendations are  
30 supported by the evidence and a judicial hearing is not necessary, the court shall enter

1 an order in accordance with the recommendations within 30 days after receiving the  
2 report from the Office.

3 (2) A court may not enter an order that is not in accordance with the  
4 recommendations from the Office unless the court holds a hearing or the hearing is  
5 waived.

6 (c) Unless the conditional release is extended under § 3-122 of this title, the  
7 court may not continue the conditions of a conditional release for more than 5 years.

8 (d) The court shall notify the Criminal Justice Information System Central  
9 Repository whenever it orders conditional release or discharge of a committed person.

10 (e) (1) An appeal from a District Court order shall be on the record in the  
11 circuit court.

12 (2) An appeal from a circuit court order shall be by application for  
13 leave to appeal to the Court of Special Appeals.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2012.